

MAINE STATE LEGISLATURE

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STATE OF MAINE

REPORT
OF THE
ATTORNEY GENERAL

For the Years
1967 through 1972

determination that the solid waste disposal area is “suitably removed from any classified body of water” will not prevent it from enforcing other statutes when new evidence is discovered or there is a later determination that the decision was based upon inadequate, misleading or false evidence or information or involved an erroneous legal conclusion, or where conditions have changed. An administrative agency may change its decision when that decision rests upon inadequate, misleading or false evidence, involves an erroneous conclusion of fact or law or where a change of conditions has occurred since its prior decision. 2 Davis, *Administrative Law Treatise* § 18.03.

6. A plain reading of the third paragraph of § 421 makes it clear that this third paragraph applies only to solid waste disposal areas established after September 23, 1971. That paragraph states:

“Any person . . . *establishing a solid waste disposal area after the effective date of this Act* may apply to the commission for a determination” (Emphasis supplied.)

E. STEPHEN MURRAY
Assistant Attorney General

June 22, 1972
Health and Welfare

J. L. Faulkner, Sanitary Engineering

The Minimum Lot Size Law; Reardon Subdivision in Freeport; your memo of June 16, 1972

SYLLABUS:

That section of the Minimum Lot Size Law, 12 M.R.S.A. § 4801-4806 (P.L. 1969, c. 365 § 1, as amended by P.L. 1971, c. 532) requiring a minimum frontage of 100 feet for any lot abutting on a public road, lake, pond, river, stream or seashore applies to all lots regardless of their size, and the Department of Health and Welfare has no power to waive this requirement of the statute as to lots located on lakes, ponds, rivers, streams or the seashore.

FACTS:

A developer desires to sell lots located on a river for residential use. While each lot would contain more than 20,000 square feet, some would have a river frontage of less than 100 feet.

QUESTIONS:

- (1) Does the 100 foot minimum frontage requirement of the Minimum Lot Size Law apply to lots of 20,000 square feet or more?
- (2) Does the Department of Health and Welfare have the power to waive this requirement as to lots located on rivers?

ANSWERS:

- (1) Yes.
- (2) No.

REASONING:

- (1) Section 4801 states:

“ . . . a lot of land which is not served by public or private community sewer . . . shall not be used for single family residential purposes unless such lot of land contains at least 20,000 square feet; and if the lot abuts on a public road, lake, pond, river, stream or seashore it shall further have a minimum frontage of 100 feet.”

A plain reading of section 4801 makes it clear that “the lot” referred to in the second phrase of the section means any “lot of land which is not served by public or private community sewer” The section does not contain any language to indicate the requirements of 20,000 square feet and 100 foot frontage are alternative requirements.

(2) Section 4801-A provides that the Department of Health and Welfare may waive the requirements of section 4801 as they relate to “the minimum frontage of a lot abutting on a public road.” A plain reading of that section makes it clear that the minimum frontage requirement cannot be waived as to lots located anywhere but on a public road.

E. STEPHEN MURRAY
Assistant Attorney General

July 17, 1972

James S. Erwin, Attorney General

Baxter State Park Trust Fund Income

SYLLABUS:

All income, produced in any manner and however characterized, from the Baxter State Park Trust Fund, must either be expended solely “for the care, protection and maintenance” of Baxter State Park or accumulated in that Fund pending such expenditure. Allocation of any such income to any other purpose, including to the General Fund, is improper.

FACTS:

It appears that subsequent to the gift in trust of certain land known as Baxter State Park to the People of the State of Maine, the Honorable Percival Proctor Baxter made a gift in trust to said people of one thousand shares of the capital stock of the Proprietors of Portland Pier Corporation. That gift was accepted by said people by enactment of Chapter 21, Private and Special Laws of 1961, in the following pertinent words:

“ . . . to be held IN TRUST forever for the benefit of the people of the State of